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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,693	07/03/2003	William T. Wilkinson	WIL-113US	7205

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RATNERPRESTIA
P.O. BOX 1596
WILMINGTON, DE 19899

EXAMINER	
DONNELLY, JEROME W	
ART UNIT	**PAPER NUMBER**
3764	

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/613,693	WILKINSON, WILLIAM T.	
	Examiner	Art Unit	
	Jerome W. Donnelly	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-27 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _____ is/are rejected. 1-23 25 and 26

7)☒ Claim(s) _____ is/are objected to. 24 and 27

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

JEROME W. DONNELLY
PRIMARY EXAMINER

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 24 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by Davis.

Davis discloses an exercise vest comprising a front and a back merging together at side portion a midline when view from the front, a right and a left resistance member both being anchored at one end to respective right and left sides of said vest in a lower region at an anchor point, both resistance members having hand engagement members at a free end and each said resistance member being made of a resilient elastic material.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 3, 7, 8, 9, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of Fray.

Davis discloses a device substantially as claimed absent the device including a mitt/glove having an open thumb area.

Fray however teaches an exercising device having resilient member wherein the hand

engagement members are mitt/gloves having open thumb areas.

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art to substitute or provide as the hand engagement member a mitt/glove component as a known and obvious hand engagement member in the art.

In regard to claims 7-10 as broadly claimed Davis discloses a device which can be pulled over a users head, fastened at a users front it wraps around a user has a longitudinal split and be worn in an open construction configuration. In regard to claim 12 note fig. 3 of Davis.

Claims 4, 5, 6, 11 and 13-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of Fray and further in view of Nurge.

Davis modified by Fray discloses a device as claimed in claim 4 absent a teaching of his device including a thumb loop.

Nurge teaches using engagement means comprising thumb loops.

Given the above teachings the examiner notes that it would have been obvious to one of ordinary skill in the art to provide an engagement means comprising a thumb loop as an alternate form of engagement means known in the art.

In regard to claims 5, 6 and 11 the examiner notes that to manufacture resistance means as being detachable from a verst, vest including pockets and resistance members being tubing, the examiner notes that all of the features are notoriously obvious and very present in the art of exercises.

In regard to claims 13-20 the examiner note that the method of use is made obvious in view of the variety of movements of the user of the device of Nurge see figs. 6-13. To use such devices wherein the user move his or her arm in various patterns about the body is known or

obvious.. If applicant considers the method claims as patentably distinct from the apparatus claims a restriction requirement will be required by the examiner in the next office action.

Claims 22, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of Fray, Nurge and barry et al.

Davis modified by Fray and Nurge disclose the device of claims 22 and 23 as claimed absent the teachings of claims 22 and 23 which further limit the device to a mallable lumbar support.

Barry et al teaches a lumber support as broadly claimed (element 28).

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art to include a lumber support/stay roll on the device of Davis modified supra for the purpose of provide lumber support to the user of Davis modified supra.

In regard to claim 25 note the flapped pockets of Barry which make providing such pocket on exercising vest as obvious.

Claim26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of Fray, Nurge and further in view of Jackson Jr..

The examiner note that to manufacture exercise garments wherein said garments have fastening structure on each arm opening is obvious in view of Jackson Jr. fig. 1.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the overall device of Shine.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.